Province of
British Columbia

ANNUAL REPORT
1990/91

LAW REFORM COMMISSION OF BRITISH COLUMBIA

MINISTRY OF ATTORNEY GENERAL

91-06084/

LAW REFORM COMMISSION OF BRITISH COLUMBIA

ANNUAL REPORT
1990/91

LRC 119

The Law Reform Commission of British Columbia was established by the *Law Reform Commission Act* in 1969 and began functioning in 1970.

The Commissioners are:

ARTHUR L. CLOSE, Q.C., *Chairman*

HON. RONALD I. CHEFFINS, Q.C., *Vice-Chairman*

MARY V. NEWBURY

LYMAN R. ROBINSON, Q.C.

PETER T. BURNS, Q.C.

THOMAS G. ANDERSON

Gregory G. Blue is Legal Research Officer to the Commission.

Sharon St. Michael is Secretary to the Commission.

Linda Grant provides text processing and technical copy preparation.

The Commission offices are located at Suite 601, Chancery Place, 865 Hornby Street, Vancouver, B.C. V6Z 2G3.

The Law Reform Commission gratefully acknowledges the financial support of the Law Foundation of British Columbia in carrying out its program.

British Columbia Cataloguing in Publication Data

Law Reform Commission of British Columbia
Annual report. -- 1981-

Continues: Law Reform Commission of British Columbia. Annual report of the Law Reform Commission of British Columbia. ISSN 0381-2510
Report year ends Mar. 31, 1983/84-
Report for 1983/84 covers Jan. 1, 1983-Mar. 31, 1984.
ISSN 0381-2510 = Annual report of the Law Reform Commission of British Columbia.

1. Law Reform Commission of British Columbia.
2. Law reform - British Columbia - Periodicals.

KEB168.A72L38 354.7110088

Table of Contents

PAGE

I INTRODUCTION 1

II PERSONALIA 2

III THE PROGRAM 2
1. Debtor-Creditor Relationship Topics 3
(a) Enforcing Judgments from Outside the Province .. 3
(b) Execution Against Securities 5
2. Joint Project on Land Title Law 5
3. The Division of Pensions on Marriage Breakdown 6
4. Apartment Corporations 6
5. Mortgages: Judicial Sales and Deficiency Claims 7
6. Affidavits: Alternatives to Oaths 7
7. Priority of Builders Liens 7
8. The Law Reform Database 8
9. Subjects of Interest 9

V ACTION ON COMMISSION RECOMMENDATIONS 9
1. Introduction 9
2. *Foreign Money Claims Act* 9
3. Beneficiary Designations 9
4. Builders Liens 10

VI THE AVAILABILITY OF COMMISSION PUBLICATIONS ... 10

VII ACKNOWLEDGEMENTS 11
1. Commission Staff 11
2. Judges' Law Reform Committee 12
3. The Law Foundation 12
4. Ministry and Government Personnel 13

APPENDICES

A REPORTS AND RECOMMENDATIONS MADE BY THE COMMISSION 14

B WORKING PAPERS ISSUED BY THE COMMISSION 24

C COMMISSION WORK REVIEWED AND CITED 27

D PAST AND PRESENT MEMBERS OF THE COMMISSION .. 30

E MINOR REPORT ON PRIORITY OF BUILDERS LIENS UNDER BILL 52 (LRC 114) 31

TO THE HONOURABLE RUSSELL G. FRASER
ATTORNEY GENERAL OF THE PROVINCE OF BRITISH COLUMBIA

The Law Reform Commission of British Columbia has the honour to present its Annual Report for 1990/91. It outlines the progress made by the Commission during the period from April 1, 1990 to March 31, 1991.

I INTRODUCTION

The Law Reform Commission of British Columbia was created in 1969 by the *Law Reform Commission Act* and it commenced operation in 1970. The function of the Commission is set out in section 2 of the Act:

> The Commission is to take and keep under review all the law of the Province, including statute law, common law and judicial decisions, with a view to its systematic development and reform, including the codification, elimination of anomalies, repeal of obsolete and unnecessary enactments, reduction in the number of separate enactments and generally the simplification and modernization of the law....

"Twenty Years of Law Reform," a detailed description of the Commission's approach to this mandate and its accomplishments, was set out in its *Annual Report 1989/90*.

During the period under review, Reports were submitted to you on the following matters:

Priority of Builders Liens Under Bill 52

Affidavits: Alternatives to Oaths

Execution Against Securities

Mortgages: Judicial Sales and Deficiency Claims

Interim Report on Enforcing Judgments from Outside the Province

In the past year, progress was also made on a number of other projects on the Commission's program, as these were brought closer to completion.

Much of the Commission's energy during the past year has been devoted to the development of its program of law reform for future work. Early in 1990, a number of large projects were completed within a relatively short time span and this left the Commission in a position to consider the addition of new projects to its program. Suggestions for potential projects were actively sought from the legal profession and other interested groups, and a large number of topics were suggested. A consideration of these suggestions, and a further exploration of those which appear to have promise as law reform projects, continues.

II PERSONALIA

As presently constituted the Commission consists of six members:

Arthur L. Close, Q.C., Chairman

Hon. Ronald I. Cheffins, Q.C., Vice-Chairman

Mary V. Newbury

Professor Lyman R. Robinson, Q.C.

Dean Peter T. Burns, Q.C.

Thomas G. Anderson

Mr. Anderson, former Counsel to the Commission, was appointed late in 1990. Details of the appointments of the other members may be found in previous Annual Reports. All Commissioners, other than the Chairman and Mr. Anderson, serve on a part-time basis. A full list of past and present members of the Commission is set out as Appendix D to this Report.

III THE PROGRAM

The description below is limited to those projects which were active in the past year. Details of other projects may be found in earlier Annual Reports. Included as Appendix A is a table setting out all Reports which the Commission has made to date, and references to legislation in which the recommendations have been implemented in whole or in part. Appendix B sets out

a list of the Working Papers which the Commission has issued for consultation purposes.

1. DEBTOR-CREDITOR RELATIONSHIP TOPICS

(a) Enforcing Judgments from Outside the Province

Late in 1989 a Working Paper titled *The Enforcement of Judgments Between Canadian Provinces* (WP 64) was released by the Law Reform Commission for consultation. It proposed that money judgments emanating from the courts of other Canadian provinces should be enforceable in British Columbia on a "full faith and credit" basis and that the wide range of defences which might be raised to resist the enforcement of an out-of-province judgment should no longer be available to the judgment debtor. A scheme which embodied this principle was set out in the form of draft legislation in the paper.

This proposal was developed against a legal background which we described in our Annual Report for 1989/90 in the following terms:

> The law which surrounds the enforcement of out-of-province judgments is deficient. It reflects principles which evolved to govern the enforceability of judgments between nations rather than units of a federation. Their application in a Canadian context is dubious. For example, under the current rules a person seeking to enforce a judgment from Alberta is no better off in substance (and little better procedurally) than if the judgment were from Albania. Change has been stifled by a view that any relaxation of these rules must be approached on the basis of reciprocal arrangements between provinces. This seems wrong in principle and a larger view is called for.

That statement of the law has been overtaken by the decision of the Supreme Court of Canada in *Morguard* v. *De Savoye* (December 20, 1990). That decision significantly limits the defences which can be raised to resist the enforcement of a judgment from another Canadian province. In the process the Supreme Court endorsed the concept of "full faith and credit" in a Canadian context.

We believe the *Morguard* decision does not detract from the urgency of enacting legislation on this topic. It is one of the limitations of "judge-made" law reform that it does not lend itself to the development and refinement of detailed schemes of the kind

required here. The scheme proposed in the Working Paper complements the decision and is a logical extension of it. The decision in *Morguard* is national in scope and this suggests that statutory reform should have a similar focus. This too was foreshadowed in the Working Paper and in other developments.

The Working Paper proposed that the desirability of achieving a full faith and credit regime on a national basis be taken up at one of the periodic meetings of the Canadian Attorneys General and Ministers of Justice and if there is some agreement on the basic policy, the whole matter be referred to the Uniform Law Conference of Canada for the development of an appropriate legislative framework. Our former Attorney General took the initiative in having this matter placed on the agenda when he met with his counterparts from other provinces in June 1990.

The full faith and credit concept was endorsed by the Attorneys General, and the matter was referred to the Uniform Law Conference as suggested. The reference also included a request that the Conference develop uniform rules or principles in relation to court jurisdiction and machinery for the transfer of proceedings between Canadian provinces. This subject was given preliminary consideration by the Conference at its annual meeting in August 1990 and a working group is being created to deal with the reference on behalf of the Conference.

Given the opportunity for comprehensive reform on a national basis, the Commission has concluded that, at least for the time being, our own work in relation to the development of a full faith and credit scheme should defer to that of the Uniform Law Conference. While that process continues, however, it seemed important to ensure that the current statutory machinery for the enforcement of out-of-province judgments should fully reflect the changes in the general law wrought by the *Morguard* decision. In March, therefore, the Commission submitted an *Interim Report on Enforcing Judgments from Outside the Province* recommending appropriate changes to the provisions of the *Court Order Enforcement Act* which concern the reciprocal enforcement of judgments. The Interim Report also addressed an anomaly in relation to the limitation period governing the enforcement of "foreign" judgments.

(b) Execution Against Securities

The provisions of the *Court Order Enforcement Act* which regulate the seizure and sale of shares under legal process have their origins in legislation that is well over a century old and are badly out of date. They reflect antiquated procedural concepts and embody an obsolete view of the legal nature of shares. Moreover, the current legislation fails to recognize and accommodate the "private company" as a modern form of business organization. What is required is a wholly new and modern legislative scheme.

Developing such a scheme raises a number of challenges. It is necessary to accommodate the competing interests which arise when the shares are in a private company. If the shares are publicly traded, the scheme must function in harmony with a rapidly evolving technological and legal environment.

A project on execution against shares and securities has been part of the Commission's program for a number of years. It came to fruition in 1991 with the submission of our final Report. The Report contains recommendations describing a comprehensive scheme for realizing on a variety of publicly traded securities and shares in private companies. The recommendations are embodied in the form of draft legislation to amend the *Court Order Enforcement Act*.

2. Joint Project On Land Title Law

The Alberta Law Reform Institute has been the catalyst for a joint project on land title law. Participating are representatives of law reform agencies and land registry officials from the western provinces, the territories and Ontario. We joined the project early in 1987 and are participating in co-operation with the Director of Land Titles for the Province.

The work of the Joint Land Titles Committee culminated in July 1990 with the promulgation of its Report: *Renovating the Foundation: Proposals for a Model Land Recording and Registration Act for the Provinces and Territories of Canada*. The document consists of a narrative which outlines the principles which the Committee believes should underlie a model law, and draft

legislation, the *Model Land Recording Registration Act*. The Act is heavily annotated and makes extensive use of examples.

Detailed study is now required to determine the extent to which the proposals of the joint committee might be appropriate for adoption in this province. Ways in which this may be approached will be considered in the coming year.

3. The Division Of Pensions On Marriage Breakdown

In March 1990 the Commission submitted its *Report on Property Rights on Marriage Breakdown*. One type of property which raised particularly complex problems was not dealt with in that Report – pension rights. Pensions raise a number of issues which make it sensible to deal with them separately. These issues are both theoretical and mechanical. Dividing rights to a future stream of income in a way which is fair to both spouses (and to the pension administrator) is qualitatively different from dividing a present asset of fixed value. A separate study was devoted to identifying both the principles and the machinery which were appropriate in achieving a fair division of this kind of asset.

In February 1991 the Commission distributed a Working Paper which set out its tentative views on this topic. The Working Paper identifies the issues that arise on pension division and considers the various methods currently available for dividing a pension. It concludes that the current methods are defective and there is a need to devise a new approach to pension division. The Paper sets out draft legislation which embodies such an approach. We expect to submit final recommendations late in 1991.

4. Apartment Corporations

Before the enactment of modern strata title legislation such as the *Condominium Act* the desire to create "self-owned apartments" was met through a variety of legal arrangements. A common arrangement involved the incorporation of a company with the apartment "owner" being a shareholder of the company. A right to occupy the apartment is attached to the share in some fashion. The Ministry of Finance and Corporate Relations has requested the Law Reform Commission to examine this type of

tenure and we added a project on apartment corporations to our program in 1990.

A consultative document was circulated informally among a number of such companies and their shareholders in late January, 1991. The possibilities for reform explored in the document drew a large and vigorous response. The Commission is in the process of considering that response.

5. MORTGAGES: JUDICIAL SALES AND DEFICIENCY CLAIMS

In a recent decision of the British Columbia Court of Appeal it was held that it was acceptable for a mortgage lender to purchase the mortgaged property on its judicial sale in a foreclosure proceeding. The effect of this is both to deprive the borrower of the property and leave the borrower liable for any deficiency which may remain. Had the foreclosure proceeded to an order absolute, there would have been no liability for a deficiency.

It has been suggested to us that this decision of the Court of Appeal represents a marked departure from what had long been the practice in this province. Late in 1990 the Commission undertook a project focused on this development. A Report was submitted in March, 1991 recommending that a sale to the mortgage lender should bar any claim for a deficiency.

6. AFFIDAVITS: ALTERNATIVES TO OATHS

Late in 1990 a short Report was submitted to the Attorney General which explored ways of reducing the inconvenience which frequently attends the formal swearing of an affidavit. It recommended that in certain circumstances it should be possible to create a valid affidavit through a "solemn certification" without requiring an appearance before a Commissioner. It also recommended that the right to create an affidavit through a "solemn affirmation" be clarified.

7. PRIORITY OF BUILDERS LIENS

A draft *Builders Lien Act* (Bill 52) introduced "for exposure" in July 1990 would modify the priority currently enjoyed by a builders lien claimant over a construction lender. A Report submitted by the Commission in 1986 set out a recommendation

which embodied a similar policy but which approached the priority issue in a broader context.

In a minor Report made in October 1990 it was recommended that before a new *Builders Lien Act* is finalized, this question should be reconsidered and that the priority position of construction lenders and lien claimants be rationalized along the lines set out in the 1986 Report. The Minor Report is reproduced in full as Appendix E to this Report.

8. The Law Reform Database

In 1988 the Commission began the process of creating a computerized Database of law reform activity in Canada, the Commonwealth, and selected American jurisdictions. The Database is intended to serve as a research tool to assist in ascertaining what attention particular topics may have received from law reform institutions. The Database is ultimately expected to cover between 3 and 4 thousand documents, each document comprising a Report, Working Paper, or similar publication emanating from a law reform agency. The Database was described in greater detail in our *Annual Report 1988/89*.

Two versions of the Database have now been released. The most recent version, released in August 1990, covers the work of virtually every Commonwealth law reform agency and contains records describing approximately 3,000 documents. The Database is distributed on computer disk, complete with run-time software.

Work on the Database continues. The current work has two aspects. The first is to keep the Database up-to-date with respect to new publications of those law reform agencies covered by the existing version. The second aspect is to bring into the Database a large volume of American law reform activity. This will include the reports and recommendations of the law reform bodies in New York and California and of the National Conference of Commissioners on Uniform State Laws. It is expected that a revised and expanded version of the Database will be distributed sometime in the spring of 1991.

9. Subjects Of Interest

Preliminary research or the gathering of material regularly proceeds on a number of matters which are not yet part of the Commission's program or under active consideration for addition to it. In most cases the preliminary work is to determine if a particular topic is appropriate for formal inclusion in the program as a Commission project. Many of these matters which are under preliminary consideration arise out of particular suggestions made, and problems drawn to the Commission's attention, by the legal profession and members of the public.

V ACTION ON COMMISSION RECOMMENDATIONS

1. Introduction

In previous Annual Reports we have expressed our pleasure in the interest taken in our work by successive Attorneys General, as reflected in the implementation of recommendations contained in past Commission Reports. This interest continued during the past year with legislation that carried forward Commission work and recommendations made in the following Reports.

2. *Foreign Money Claims Act*

The *Foreign Money Claims Act* implemented the recommendations made in the Commission's *Report on Foreign Money Liabilities* (LRC 65, 1983). The new act followed the form of the Uniform Act of the same title promulgated by the Uniform Law Conference of Canada in 1989. The Commission's recommendations played a major role in shaping the Uniform Act.

3. Beneficiary Designations

Other recommendations implemented in 1990 were those made in our *Report on the Making and Revocation of Wills* (LRC 52, 1981) concerning the designation of retirement plan beneficiaries. These were implemented through amendments to the *Law and Equity Act*.

4. BUILDERS LIENS

We were also pleased to note the introduction of legislation that would substantially implement the recommendations made in our *Report on the Mechanics' Lien Act* (LRC 7, 1972). Bill 52, the *Builders Lien Act*, was introduced "for exposure" and given first reading in July 1990.

VI THE AVAILABILITY OF COMMISSION PUBLICATIONS

All final Reports on major topics issued by the Commission are formally published with the intention that they be available to the public. From time to time the Commission also submits minor Reports, in the form of a letter to the Attorney General. These minor Reports are usually reproduced in full as appendices to the Annual Report which covers the period in which the minor Report was made. Our Annual Reports are distributed by the Commission and are available on request and free of charge so long as stocks last.

Crown Publications Inc. is responsible for the distribution of all Reports made by the Commission on particular topics. A nominal charge is made for copies of those Reports. Orders should be directed to:

CROWN PUBLICATIONS INC.
546 Yates Street
Victoria, B.C.
V8W 1K8
(604) 386-4636

Orders may be placed in person or by mail or telephone. VISA and MASTERCHARGE are accepted. A number of our older Reports are now out of print and are not available for purchase. Those Reports are indicated with an asterisk in Appendix A.

Crown Publications Inc. maintains a "notification list" and all persons on the list are advised upon publication of a Commission Report, so they may order copies if they wish. Standing orders for Commission Reports may also be lodged by certain categories of buyer. Anyone who wishes to be added to the notifica-

tion list, or wishes information concerning standing orders should contact Crown Publications Inc.

The Commission is solely responsible for the distribution of its Working Papers. These documents are usually produced in limited quantities and our supplies of them are invariably exhausted by, or shortly after, their initial distribution. Usually we are unable to respond to requests either for copies of past Working Papers or to be placed on a mailing list to receive copies of all Working Papers.

VII ACKNOWLEDGEMENTS

1. Commission Staff

As we have pointed out in previous Annual Reports, our policy of doing the greater part of our research work internally, rather than relying on outside consultants, places a heavy burden of responsibility on the shoulders of our permanent staff. They invariably respond to the challenge with energy, enthusiasm and careful scholarship. We wish to express our sincerest thanks to all those individuals who, in the past year, contributed to our work in this way.

Our particular thanks go to Gregory G. Blue for the intelligence and enthusiasm he brings to his work with us. In addition to research and writing with respect to various projects, he has participated in the work on the Law Reform Database. We also wish to thank Bronwen Jamison for her valuable work on the Database.

Our support staff also make a notable contribution to the work of the Commission. They bring intelligence and efficiency to their duties and share a concern that our work should be of the highest quality in every respect. Our support staff presently consists of Sharon St. Michael, Secretary to the Commission, and Linda Grant, who operates our desktop publishing system. We thank them for their efforts on our behalf.

2. Judges' Law Reform Committee

The Judges' Law Reform Committee is important to our operation. This Committee provides a continuing point of contact with the judiciary. The Committee assists us through responding to our Working Papers and other consultative documents and by calling to our attention defects in the law that its members are well-situated to identify.

The committee members bring a unique perspective to bear on our work and their advice is invariably cogent and helpful. The work of the Judges' Committee plays a major role in the law reform process and we are immensely grateful to the individual members of the bench who give so generously of their time and energy to this end.

3. The Law Foundation

The Law Foundation of British Columbia continues to respond generously to the Commission's requests for funding to help sustain its operation. In the past year, the Foundation again provided much needed assistance.

The support of law reform is listed as one of the Foundation's objects in the statute under which it is constituted. In enabling the Law Reform Commission to carry on with its functions, the Law Foundation truly fulfills that object and renders an important service to the people of the Province.

4. Ministry And Government Personnel

There are a number of individuals and agencies within Government who have, in the past year, contributed to the work of the Commission.

The Law Reform Commission has always had a special relationship with the office of Legislative Counsel. Its personnel are invariably, within the limits of their resources, responsive and helpful when we request assistance in the preparation of proposed legislation. We particularly wish to thank Clifford S. Watt, Q.C., Chief Legislative Counsel, and the other members of his office.

We also wish to express our appreciation to Ms Jane Taylor, Director of Library Services to the Ministry. She has assisted us in keeping our own collection up to date and provided access to new materials in a timely fashion.

Finally, we wish to thank the Attorney General and all those within his Ministry who, during the period under review, in their dealings with the Commission on a day-to-day basis have contributed to our work and made life easier. In particular our thanks go to E.R.A. Edwards, Q.C., the Deputy Attorney General and various officers within the Information Services, Data Services, Policy Planning, Financial Services and the Facilities Management divisions and units of the Ministry. All have, in one way or another, assisted us greatly.

ARTHUR L. CLOSE, Q.C.

HON. RONALD I. CHEFFINS, Q.C.

MARY V. NEWBURY

LYMAN R. ROBINSON, Q.C.

PETER T. BURNS, Q.C.

THOMAS G. ANDERSON

APPENDIX A

REPORTS AND RECOMMENDATIONS MADE BY THE COMMISSION

No.	Title	Date	Recommendations Implemented in Whole or in Part by
1	Limitations – Abolition of Prescription*	Dec. 1970	*Land Registry (Amendment) Act, 1971*, S.B.C. 1971, c. 30, s. 8 (see now *Land Title Act*, R.S.B.C. 1979, c. 219, s. 24).
2	Annual Report 1970*	Dec. 1970	Not applicable
3	Frustrated Contracts Legislation*	Feb. 1971	*Frustrated Contracts Act*, S.B.C. 1974, c. 37 (see now *Frustrated Contract Act*, R.S.B.C. 1979, c. 144); *Landlord and Tenant Act*, S.B.C. 1974, c. 45, s. 61(e) (see now *Residential Tenancy Act*, R.S.B.C. 1979, c. 365 s. 8(3)); *Commercial Tenancies Act*, R.S.B.C. 1960, c. 207, s. 34 (see now *Commercial Tenancy Act*, R.S.B.C. 1979, c. 54, s. 33).
4	Debt Collection and Collection Agents*	Mar. 1971	*Debt Collection Act*, S.B.C. 1973, c. 26 (see now *Debt Collection Act*, R.S.B.C. 1979, c. 88).
5	Expropriation*	Dec. 1971	*Expropriation Act*, S.B.C. 1987, c. 23.
6	Annual Report 1971*	Dec. 1971	Not applicable
7	*Mechanics' Lien Act**	June 1972	*Builders Lien Amendment Act, 1984*, S.B.C. 1984, c. 16, s. 3 [in part]; *Builders Lien Amendment Act (No. 2), 1984*, S.B.C. 1984, c. 17, s. 1 [in part].
8	Deficiency Claims and Repossessions*	June 1972	*Conditional Sales Act*, S.B.C. 1973, c. 19 (see now *Sale of Goods on Condition Act*, R.S.B.C. 1979, c. 373); *Bills of Sale Act*, S.B.C. 1973, c. 7 (see now *Chattel Mortgage Act*, R.S.B.C. 1979, c. 48).
9	Legal Position of the Crown*	Dec. 1972	*Crown Proceedings Act*, S.B.C. 1974, c. 24 (see now *Crown Proceeding Act*, R.S.B.C. 1979, c. 86); *Interpretation Act*, S.B.C. 1974, c. 42, s. 13 (see now *Interpretation Act*, R.S.B.C. 1979, c. 206, s. 14).
10	Annual Report 1972*	Dec. 1972	Not applicable

* Report is out of print.

No.	Title	Date	Recommendations Implemented in Whole or in Part by
11	Interim Report on Evidence*	Feb. 1973	*Attorney-General Statutes Amendment Act, 1975*, S.B.C. 1975, c. 4, s. 6 (see now *Evidence Act*, R.S.B.C. 1979, c. 116, ss. 37, 38).
12	Pre-Judgment Interest*	May 1973	*Prejudgment Interest Act*, S.B.C. 1974, c. 65 (see now *Court Order Interest Act*, R.S.B.C. 1979, c. 76).
13	Landlord and Tenant – Residential Tenancies*	Dec. 1973	*Landlord and Tenant Act*, S.B.C. 1974, c. 45 (see now *Residential Tenancy Act*, S.B.C. 1984, c. 10).
14	Annual Report 1973*	Jan. 1974	Not applicable
15	Limitations – General*	Mar. 1974	*Limitations Act*, S.B.C. 1975, c. 37 (see now *Limitation Act*, R.S.B.C. 1979, c. 236); *Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, s. 6 [in part].
16	Costs of Accused on Acquittal*	June 1974	----
17	Procedure Before Statutory Bodies*	Nov. 1974	----
18	A Procedure for Judicial Review of the Actions of Statutory Bodies*	Dec. 1974	*Judicial Review Procedure Act*, S.B.C. 1976, c. 25 (see now *Judicial Review Procedure Act*, R.S.B.C. 1979, c. 209).
19	Annual Report 1974*	Jan. 1975	Not applicable
20	Costs of Successful Unassisted Lay Litigants*	Apr. 1975	----
21	The Termination of Agencies*	Apr. 1975	*Miscellaneous Statutes Amendment Act (No. 1), 1987*, S.B.C. 1987, c. 42, s. 91 (see now *Power of Attorney Act*, R.S.B.C. 1979, c. 334, ss. 1–4); *Miscellaneous Statutes Amendment Act (No. 2), 1987*, S.B.C. 1987, c. 43, s. 104 (see now *Trustee Act*, R.S.B.C. 1979, c. 414, ss. 14(7), 14(11)).
22	Powers of Attorney and Mental Incapacity*	May 1975	*Attorney-General Statutes Amendment Act, 1979*, S.B.C. 1979, c. 2, s. 52 (see now *Power of Attorney Act*, R.S.B.C. 1979, c. 334, s. 7).

* Report is out of print.

No.	Title	Date	Recommendations Implemented in Whole or in Part by
23	Personal Property Security*	Oct. 1975	*Personal Property Security Act*, S.B.C. 1989, c. 36.
24	Security Interests in Real Property: Remedies on Default*	Dec. 1975	*Miscellaneous Statutes (Court Rules) Amendment Act*, S.B.C. 1976, c. 33, s. 94(a) [in part] (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 16); Supreme Court Rules, Rule 50 (11), 3(2) [in part]; *Land Titles Act*, S.B.C. 1978, c. 25 [in part] (see now *Land Title Act*, R.S.B.C. 1979, c. 219, ss. 224–225); *Attorney General Statutes Amendment Act*, S.B.C. 1980, c. 1, s. 15 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 21.1) [in part]; *Property Law Act*, R.S.B.C. 1979, c. 340, s. 28 [in part]; *Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, s. 5 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 16.1) [in part].
25	Annual Report 1975*	Jan. 1976	Not applicable
26	Minors' Contracts*	Feb. 1976	*Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, ss. 1, 2, 10 (see now *Infants Act*, R.S.B.C. 1979, c. 196, Part 2.1 (ss. 16.1–16.11)).
27	Extra-Judicial Use of Sworn Statements*	Apr. 1976	See, e.g., *Mineral Act, 1977*, S.B.C. 1977, c. 54, s. 20(2).
28	Rule in *Bain* v. *Fothergill**	June 1976	*Conveyancing and Law of Property Act*, S.B.C. 1978, c. 16, s. 33 (see now *Property Law Act*, R.S.B.C. 1979, c. 340, s. 33).
29	Annual Report 1976*	Dec. 1976	Not applicable
30	The Rule in *Hollington* v. *Hewthorn**	Jan. 1977	*Evidence Amendment Act, 1977*, S.B.C. 1977, c. 70 (see now *Evidence Act*, R.S.B.C. 1979, c.116, ss. 15(3), 80, 81).
31	Waiver of Conditions Precedent in Contracts*	Apr. 1977	*Attorney-General Statutes Amendment Act, 1978*, S.B.C. 1978, c. 11, s. 8 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 49).
32	Proof of Marriage in Civil Proceedings*	June 1977	*Attorney-General Statutes Amendment Act, 1979*, S.B.C. 1979, c. 2, s. 18 (see now *Evidence Act*, R.S.B.C. 1979, c. 116, s. 58).

* Report is out of print.

No.	Title	Date	Recommendations Implemented in Whole or in Part by
33	The *Statute of Frauds**	June 1977	*Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, ss. 7, 8 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 54).
34	Tort Liability of Public Bodies*	June 1977	----
35	*Offences Against the Person Act, 1828*, Section 28*	Aug. 1977	*Attorney-General Statutes Amendment Act, 1978*, S.B.C. 1978, c. 11, s. 8 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 3).
36	Annual Report 1977	Jan. 1978	Not applicable
37	*Absconding Debtors Act* and *Bail Act*: Two Obsolete Acts*	Mar. 1978	*Attorney-General Statutes Amendment Act, 1978*, S.B.C. 1978, c. 11, s. 8, ss. 1, 2.
38	The *Replevin Act**	May 1978	*Rules of Court*, Rule 46 as amended Nov. 26, 1981 by B.C. Reg 467/81. *Attorney General Statutes Amendment Act, 1982*, S.B.C. 1982, c. 46, ss. 3–6, 25, 37–41.
39	The *Attachment of Debts Act**	Oct. 1978	----
40	Execution Against Land*	Oct. 1978	----
41	Annual Report 1978	Jan. 1979	Not applicable
42	Creditor's Relief Legislation: A New Approach	Jan. 1979	----
43	Guarantees of Consumer Debts*	June 1979	*Consumer Protection Amendment Act, 1980*, S.B.C. 1980, c. 6, s. 3. [in part].
44	Parol Evidence Rule	Dec. 1979	----
45	Annual Report 1979 (Limitation Periods in Actions Against Estates)	Jan. 1980	*Attorney General Statutes Amendment Act, 1980*, S.B.C. 1980, c. 1, ss. 7, 17 (see now *Estate Administration Act*, R.S.B.C. 1979, c. 114, s. 66(4)(b)); *Negligence Act*, R.S.B.C. 1979, c. 298, s. 7(3).
46	Civil Litigation in the Public Interest	June 1980	----

* Report is out of print.

No.	Title	Date	Recommendations Implemented in Whole or in Part by
47	Calculation of Interest on Foreclosure	Sept. 1980	*Attorney General Statutes Amendment Act, 1981*, S.B.C. 1981, c. 10, s. 28 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 18.1).
48	The Recovery of Unauthorized Disbursements of Public Funds	Sept. 1980	*Financial Administration Act*, S.B.C. 1981, c. 15, s. 67.
49	Annual Report 1980 (Discount Rates)*	Jan. 1981	*Attorney General Statutes Amendment Act, 1981*, S.B.C. 1981, c. 10, s. 30 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 51).
50	Cable Television and Defamation	Mar. 1981	*Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, s. 9 (see now *Libel and Slander Act*, R.S.B.C. 1979, c. 234, s. 1 ["broadcasting"]).
51	Benefits Conferred Under a Mistake of Law	Sept. 1981	----
52	The Making and Revocation of Wills*	Sept. 1981	*Attorney General Statutes Amendment Act (No. 2), 1990*, S.B.C. 1990, c. 34, s. 9 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 46) [in part].
53	Distress for Rent	Nov. 1981	----
54	Annual Report 1981	Jan. 1982	Not applicable
55	Arbitration	May 1982	*Commercial Arbitration Act*, S.B.C. 1986, c. 3. *Foreign Arbitral Awards Act*, S.B.C. 1985, c. 74 [in part].
56	Presumptions of Survivorship	Nov. 1982	----
57	The Crown as Creditor: Priorities and Privileges	Nov. 1982	----
58	Interpretation of Wills	Nov. 1982	----

* Report is out of print.

No.	Title	Date	Recommendations Implemented in Whole or in Part by
59	Interest and Jurisdictional Limits in the County and Provincial Courts [Printed as an Appendix to LRC 60]	July 1982	*Miscellaneous Statutes Amendment Act (No. 1), 1984*, S.B.C. 1984, c. 25, s. 63 (see now *Small Claims Act*, S.B.C. 1989, c. 38, s. 3(1)); *Miscellaneous Statutes Amendment Act (No. 2), 1984*, S.B.C. 1984, c. 26, s. 2.
60	Annual Report 1982	Jan. 1983	Not applicable
61	Standing of a Common Law Spouse to Apply Under the *Family Compensation Act* [Printed as an Appendix to LRC 73]	Jan. 1983	*Family Law Reform Amendments Act, 1985*, S.B.C. 1985, c. 72, s. 3 (see now *Family Compensation Act*, R.S.B.C. 1979, c. 120, s. 1).
62	Interspousal Immunity in Tort	Mar. 1983	*Charter of Rights Amendments Act, 1985*, S.B.C. 1985, c. 68, ss. 50–53, 79, 83, 98 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 55).
63	Peremptory Challenges in Civil Jury Trials	June 1983	*Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, ss. 3, 4 (see now *Jury Act*, R.S.B.C. 1979, c. 210, ss. 18, 18.1).
64	Breach of Promise of Marriage	Aug. 1983	*Family Law Reform Amendments Act, 1985*, S.B.C. 1985, c. 72, ss. 1, 36 (see now *Family Relations Act*, R.S.B.C. 1979, c. 121, s. 75).
65	Foreign Money Liabilities	Sept. 1983	*Foreign Money Claims Act*, S.B.C. 1990, c. 18.
66	Competing Rights to Mingled Property: Tracing and the Rule in *Clayton*'s Case	Sept. 1983	----
67	Bulk Sales Legislation	Oct. 1983	*Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, ss. 11–13.
68	Intentional Interference with Domestic Relations	Nov. 1983	*Family Law Reform Amendments Act, 1985*, S.B.C. 1985, c. 72, ss. 35, 37, 40 (see now *Family Relations Act*, R.S.B.C. 1979, c. 121, s. 75) [in part].
69	Illegal Transactions	Nov. 1983	----

[9] Report is out of print.

No.	Title	Date	Recommendations Implemented in Whole or in Part by
70	Statutory Succession Rights	Dec. 1983	----
71	Minor (Interim) Report on the *Land (Wife Protection) Act* [Printed as an Appendix to LRC 73]	Jan. 1984	*Charter of Rights Amendments Act, 1985*, S.B.C. 1985, c. 68, ss. 61–78 (see now *Land (Spouse Protection) Act*, R.S.B.C. 1979, c. 223).
72	Minor Report on The Jurisdiction of Local Judges: Stays of Execution and Instalment Orders [Printed as an Appendix to LRC 73]	Feb. 1984	*Rules of Court*, Rule 42(25) as amended by B.C. Reg. 18/85, s. 15 (effective April 1, 1985).
73	Annual Report 1983/84	Apr. 1984	Not applicable
74	Covenants in Restraint of Trade*	Apr. 1984	----
75	Review of Civil Jury Awards	Sept. 1984	----
76	Compensation for Non-Pecuniary Loss*	Sept. 1984	----
77	Settlement Offers	Sept. 1984	*Rules of Court*, Rule 37(30) as enacted by B.C. Reg. 18/85, s. 10(b) [in part].
78	The Authority of a Guardian	Jan. 1985	*Miscellaneous Statutes Amendment Act (No. 1), 1987*, S.B.C. 1987, c. 42, ss. 22, 23 (see now *Family Relations Act*, R.S.B.C. 1979, c. 121, ss. 1, 25(2), 25(3)).
79	A Short Form General Power of Attorney [Printed as an Appendix to LRC 80]	Mar. 1985	*Miscellaneous Statutes Amendment Act (No. 1), 1987*, S.B.C. 1987, c. 42, ss. 92, 93 (see now *Power of Attorney Act*, R.S.B.C. 1979, c. 334, s. 8 and Schedule).
80	Annual Report 1984/85	Apr. 1985	Not applicable
81	Performance Under Protest*	May 1985	*Miscellaneous Statutes Amendment Act (No. 1), 1987*, S.B.C. 1987, c. 42, s. 52 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, ss. 57, 58).

* Report is out of print.

No.	Title	Date	Recommendations Implemented in Whole or in Part by
82	Minor Report on the Domicile of a Minor [Printed as an Appendix to LRC 86]	Sept. 1985	*Law Reform Amendment Act, 1988*, S.B.C. 1988, c. 42, s. 2. (see now *Infants Act*, R.S.B.C. 1979, c. 196, s. 19.1).
83	Defamation*	Sept. 1985	----
84	Personal Liability Under a Mortgage or Agreement for Sale	Sept. 1985	*Law Reform Amendment Act, 1988*, S.B.C. 1988, c. 42, ss. 5-7 (see now *Property Law Act*, R.S.B.C. 1979, c. 340, ss. 19.1–20.3).
85	Mortgages of Land: The Priority of Further Advances	Jan. 1986	----
86	Annual Report 1985/86	Apr. 1986	Not applicable
87	Spousal Agreements	Aug. 1986	----
88	Shared Liability	Aug. 1986	----
89	Action *Per Quod Servitium Amisit*	Nov. 1986	*Law Reform Amendment Act, 1988*, S.B.C. 1988, c. 42, s. 4.
90	The *Court Order Interest Act*	Jan. 1987	----
91	Obsolete Remedies Against Estate Property: *Estate Administration Act*, Part 9	Mar. 1987	*Law Reform Amendment Act, 1988*, S.B.C. 1988, c. 42, ss. 1, 3, 8, 9.
92	Annual Report 1986/87	Apr. 1987	Not applicable
93	The Buyer's Lien: A New Consumer Remedy	Aug. 1987	----
94	Fraudulent Conveyances and Preferences	Jan. 1988	----
95	Annual Report 1987/88	Apr. 1988	Not applicable
96	Deeds and Seals	June 1988	----

* Report is out of print.

No.	Title	Date	Recommendations Implemented in Whole or in Part by
97	Set-Off	July 1988	----
98	Minor Report on Practice in Relation to the Cancellation of a Certificate of *Lis Pendens* [Printed as an Appendix to LRC 104]	Nov. 1988	*Land Title Amendment Act, 1989*, S.B.C. 1989, c. 69, ss. 27, 28 (see now *Land Title Act*, R.S.B.C. 1979, c. 219, ss. 231, 235).
99	The *Land (Settled Estate) Act*	Nov. 1988	*Attorney General Statutes Amendment Act, 1989*, S.B.C. 1989, c. 64, ss. 8, 33, 34 (see now *Trust and Settlement Variation Act*, R.S.B.C. 1979, c. 413, s. 3.1).
100	Co-Ownership of Land	Dec. 1988	----
101	Response to *Access to Justice* - the Report of the Justice Reform Committee [Printed as an Appendix to LRC 104]	Dec. 1988	Not applicable
102	Wills and Changed Circumstances	Jan. 1989	----
103	Floating Charges on Land	Jan. 1989	*Personal Property Security Act*, S.B.C. 1989, c. 36, s. 104 (see now *Land Title Act*, R.S.B.C. 1979, c. 219, s. 198.1).
104	Annual Report 1988/89	Apr. 1989	Not applicable
105	Minor Report on Severance of Unconstitutional Enactments [Printed as an Appendix to LRC 113]	May 1989	----
106	Vicarious Liability Under the *Motor Vehicle Act*	June 1989	*Miscellaneous Statutes Amendment Act (No. 2), 1990*, S.B.C. 1990, c. 58, s. 16 (see now *Motor Vehicle Act*, R.S.B.C. 1979, c. 288, s. 216) [in part].
107	Minor Report on Loss Appraisal under the *Insurance Act*	July 1989	----

[*] Report is out of print.

No.	Title	Date	Recommendations Implemented in Whole or in Part by
108	The *Commercial Tenancy Act*	Dec. 1989	----
109	Notice Requirements in Proceedings Against Municipal Bodies	Jan. 1990	----
110	The Enduring Power of Attorney: Fine-tuning the Concept	Feb. 1990	----
111	Property Rights on Marriage Breakdown	Mar. 1990	----
112	The Ultimate Limitation Period: *Limitation Act*, Section 8	Mar. 1990	----
113	Annual Report 1989/90	Apr. 1990	Not applicable
114	Minor Report on Priority of Builders Liens Under Bill 52 [Printed as an Appendix to LRC 119]	Oct. 1990	----
115	Affidavits: Alternatives to Oaths	Nov. 1990	----
116	Execution Against Securities	Mar. 1991	----
117	Interim Report on Enforcing Judgments from Outside the Province	Mar. 1991	----
118	Mortgages: Judicial Sales and Deficiency Claims	Mar. 1991	----
119	Annual Report 1990/91	Mar. 1991	Not applicable

* Report is out of print.

APPENDIX B

WORKING PAPERS ISSUED BY THE COMMISSION

Number	Title	Year
1	Frustrated Contracts Legislation	1970
2	Abolition of Prescription	1970
3	Debt Collection and Collection Agents	1971
4	Deficiency Claims and Repossessions	1971
5	The *Mechanics' Lien Act*	1971
6	Expropriation (2 v.)	1971
7	Legal Position of the Crown	1972
8	Debtor-Creditor Relationships (Project No. 2) Part IV – Pre-Judgment Interest	1973
9	Costs of Accused on Acquittal	1973
10	A Procedure for Judicial Review of the Actions of Statutory Bodies	1974
11	Tort Liability of Public Bodies	1974
12	Powers of Attorney and Mental Incapacity	1974
13	Costs of Successful Litigants in Person	1974
14	The *Powers of Attorney Act* and the Termination of Agencies	1974
15	Security Interests in Real Property: Remedies on Default	1975
16	Minors' Contracts	1975
17	Extra-Judicial Use of Sworn Statements	1975
18	The Enforcement of Judgments: The *Attachment of Debts Act*	1976
19	The Rule in *Hollington* v. *Hewthorn*	1976
20	The Statute of Frauds	1976
21	The Enforcement of Judgments: The *Creditors' Relief Act*	1976
22	The Enforcement of Judgments: Execution Against Land	1976
23	The *Replevin Act*	1977
24	Guarantees of Consumer Debts	1978
25	Arbitration	1979

Number	Title	Year
26	Civil Litigation in the Public Interest	1979
27	The Calculation of Interest on Foreclosure	1980
28	The Making and Revocation of Wills	1980
29	Distress for Rent and Other Debts	1980
30	Benefits Conferred Under a Mistake of Law	1980
31	The Crown as Creditor: Priorities and Privileges	1981
32	Interpretation of Wills	1981
33	Foreign Money Liabilities	1981
34	Interspousal Immunity in Tort	1982
35	Statutory Succession Rights	1982
36	Competing Rights to Mingled Property: Tracing and the Rule in *Clayton's Case*	1982
37	Peremptory Challenges in Civil Jury Trials	1982
38	Illegal Contracts	1982
39	Breach of Promise of Marriage	1983
40	Bulk Sales Legislation	1983
41	Covenants in Restraint of Trade	1983
42	Intentional Interference with Domestic Relations	1983
43	Compensation for Non-Pecuniary Loss	1983
44	Review of Civil Jury Awards	1983
45	Settlement Offers	1984
46	Performance Under Protest	1984
47	Mortgages of Land: The Priority of Further Advances	1985
48	Personal Liability Under a Mortgage or Agreement for Sale	1985
49	The *Court Order Interest Act*	1985
50	Shared Liability	1985
51	Spousal Agreements	1985
52	The Buyer's Lien: A New Consumer Remedy	1986
53	Fraudulent Conveyances and Preferences	1986
54	Set-Off	1987

Number	Title	Year
55	Execution Against Shares	1987
56	Deeds and Seals	1987
57	Testamentary Intent and Unexpected Circumstances	1987
58	Co-Ownership of Land	1987
59	The *Land (Settled Estate) Act*	1988
60	Vicarious Liability Under the *Motor Vehicle Act*	1988
61	The *Commercial Tenancy Act*	1988
62	The Enduring Power of Attorney: Fine-tuning the Concept	1989
63	Property Rights on Marriage Breakdown	1989
64	The Enforcement of Judgments Between Canadian Provinces	1989
65	Division of Pensions on Marriage Breakdown	1990

STUDY PAPERS

S1	The Office of the Sheriff	1983
S2	Family Property	1985
S3	Court Jurisdiction	1989

APPENDIX C

COMMISSION WORK REVIEWED AND CITED

Following is a partial list of reviews, articles and books in which the Commission's work has recently been referred to or discussed.

H.C. Alvarez, "The Role of Arbitration in Canada – New Perspectives," (1987) 21 U.B.C. L. Rev. 247.

G. Bale, "Palm Tree Justice and Testator's Family Maintenance – The Continuing Saga of Confusion and Uncertainty in the B.C. Courts," (1987) 26 E.T.R. 295.

V. Black, "The Enforcement of Judgments Between Canadian Provinces. Working Paper No. 64." (1990) 69 Can. B. Rev. 813.

J. Blom, Book Review, "Report on Set-Off," (1989) 5 B.F.L.R. 246.

W.A. Bogart, "Developments in the Canadian Law of Standing," (1984) 3 Civ. J.Q. 339.

W.A. Bogart, "Review – Law Reform Commission of British Columbia, Report on the Crown as Creditor: Priorities and Privileges," (1984) 48 C.B.R. 181.

Bowles and Whalen, "Working Paper on Foreign Money Liabilities," (1982) 60 Can. B. Rev. 805.

Bowles and Whalen, "Compound Interest: Could Multipliers be the Way Forward?" (1986) 136 N.L.J. 876.

Bowles and Whalen, "The Law of Interest: Dawn of a New Era?" (1986) 64 Can. B. Rev. 142.

P.C. Casey, "Friendly Acquisitions: Investigations and Practical Problems," (1987) Meredith Memorial Lectures 57.

F.M. Catzman, "Law Reform Commission of British Columbia, Bulk Sales Legislation, Working Paper No. 40," (1983) 8 Can. Bus. L.J. 109.

Commonwealth Secretariat, "The Commonwealth-wide Law Reform Database," (1990) 16 Commonwealth L.B. 1443.

B. Crawford, "The Legal Aspect of Money, 4th ed., by F.A. Mann," (1982-3) 7 Can. Bus. L.J. 368.

G.H.L. Fridman, "Law Reform Commission of British Columbia, Competing Rights to Mingled Property: Tracing and the Rule in Clayton's Case, Working Paper No. 36," (1982-83) 7 Can. Bus. L.J. 353.

G.H.L. Fridman and J.G. McLeod, *Restitution*, Toronto, The Carswell Company Limited, 1982 at 166 to 172.

F.W. Hansford, Book Review, "Restitution by G.H.L. Fridman and James G. McLeod, ... Unjust Enrichment by George B. Klippert ..." (1984) 18 U.B.C.L. Rev. 177.

B.W. Harvey, "Report on Fraudulent Conveyances and Preferences (Law Reform Commission of British Columbia, 1988)," (1989) 8 C.J.Q. 3.

J.W. Horn, "Annotation, *Bank of Montreal* v. *Kim*," (1990) 36 C.P.C. (2d) 242.

G.B. Klippert, *Unjust Enrichment*, Toronto, Butterworth's, 1983 at 152 to 156.

P.B. Kutner, "Law Reform in Tort: Abolition of Liability for 'Intentional' Interference with Family Relationships," (1987) 17 Western Aust. L. Rev. 25.

G. Laing, "British Columbia Law Reform Commission's Report on Property Rights on Marriage Breakdown: An Uneasy Compromise," (1991) 49 The Advocate 242.

H.W.D. Lewis, Note on "Rule in *Bain* v. *Fothergill*," (1985) 135 N.L.J. 479.

K.J. MacLise, "Family Law Reform in British Columbia," (1990) 6 C.F.L.Q. 157.

J.K. Maxton, "Execution of Wills: The Formalities Considered," [1982] 1 Canterbury L. Rev. 393.

F. Meisel, "British Columbia Law Reform Commission Report on Arbitration," [1983] Civ. J.Q. 197.

F. Meisel, Note on "Settlement Offers," [1986] Civ. J.Q. 99.

D.S. Moir, "Review: Family Property: A Study Paper prepared for the Law Reform Commission of British Columbia" (1987) 6 Can. J. Fam. L. 145.

M.H. Ogilvie, Review, "Report on Covenants in Restraint of Trade. Law Reform Commission of British Columbia," (1985) 63 Can. B. Rev. 250.

D.A. Potts and C.A. Matthews, "Procedural Concerns in Broadcast Libel," (1988) 10 Adv. Q. 29.

S.A. Rae, "Inflation and the Law of Contracts and Torts," (1982) 14 Ottawa L. Rev. 465.

J. T. Robertson, "Judgment on the Covenant at Order Nisi – A Response to Judicial Opinion, Accepted Practice and the Law Reform Commission of British Columbia," (1987) 21 U.B.C.L. Rev. 1.

L. Romero, "Law Reform Commission of British Columbia, Report on Deeds and Seals," (1989) 15 Can. Bus. L. J. 368.

S. Schwartz "Review – Law Reform Commission of British Columbia, Report on Illegal Contracts," (1985) 10 Can. Bus. L.J. 83.

L.M. Sherwood, "Contracts – Illegality and Section 305.1 of the Criminal Code," (1983) 61 Can. B. Rev. 866.

M.A. Springman, "Fraudulent Conveyances, Fraudulent Preferences, and Other Voidable Transactions," (1988) L.S.U.C. Special Lectures.

H.G. Stark, "Review of the Report of the Law Reform Commission of British Columbia on Spousal Agreements," (1987) 2 C.F.L.Q. 55.

W.M.B. Voroney, Case Comment on *Stevens* v. *Quinney*, (1980) 101 D.L.R. (3d) 289, [1979] 5 W.W.R. 284, (1980) 5 Sask. R. 219; (1980) 60 Can. B. Rev. 688.

S.M. Waddams, "Foreign Money Liabilities: Law Reform Commission of British Columbia, Working Paper No. 33," (1981-82) 6 Can. Bus. L.J. 352.

S.M. Waddams, "Law Reform Commission of British Columbia, Illegal Contracts, Working Paper No. 38," (1982-83) 7 Can. Bus. L.J. 361.

S.M. Waddams, "Compensation for Non-Pecuniary Loss: Is There a Case for Legislative Intervention?" (1985) 63 Can. B. Rev. 734.

D.M. Waters, "Trusts in the Setting of Business, Commerce and Bankruptcy," (1983) 21 Alta. L. Rev. 395.

B.H. Wildsmith, "Report on Civil Litigation in the Public Interest," (1982-83) 7 Dalhousie L.J. 463.

G. Williams, "Review: Law Reform Commission of British Columbia, Report on Spousal Agreements" (1987) 6 Can. J. Fam. L. 143.

R.J. Wood, "Law Reform Commission of British Columbia Report on the Buyer's Lien: A New Consumer Remedy," (1988) 14 Can. Bus. L. J. 118.

B. Ziff, "Recent Developments in Canadian Law: Marriage & Divorce," (1990) 22 Ottawa L. Rev. 139.

APPENDIX D

PAST AND PRESENT MEMBERS OF THE COMMISSION

Hon. E.D. Fulton	Chairman	1970 to 1973
Hon. Mr. Justice F.U. Collier	Commissioner	1970 to 1971
Dr. Richard Gosse	Commissioner	1970 to 1972
Ronald C. Bray	Commissioner	1971 to 1977
	Acting Chairman	1973 to 1974
J. Noel Lyon	Commissioner	1972 to 1973
Allen A. Zysblat	Commissioner	1973 to 1976
Paul D.K. Fraser, Q.C.	Commissioner	1973 to 1979
Hon. Mr. Justice Peter Fraser	Commissioner	1973 to 1982
	Acting Chairman	1978 to 1979
Leon Getz	Chairman	1974 to 1977
	Commissioner	1974 to 1979
Hon. Mr. Justice J.D. Lambert	Commissioner	1976 to 1978
	Chairman	1978
Kenneth C. Mackenzie	Commissioner	1978 to 1983
Bryan Williams, Q.C.	Commissioner	1979 to 1984
Anthony F. Sheppard	Commissioner	1979 to 1984
Arthur L. Close, Q.C.	Commissioner	1979 to date
	Vice-Chairman	1983 to 1984
	Chairman	1984 to date
Hon. Mr. Justice J.S. Aikins	Chairman	1980 to 1983
Hon. Ronald. I. Cheffins, Q.C.	Commissioner	1983 to 1985
	Vice-Chairman	1984 to 1985
		1987 to date
Mary V. Newbury	Commissioner	1984 to date
Lyman R. Robinson, Q.C.	Commissioner	1985 to date
Peter T. Burns, Q.C.	Commissioner	1986 to date
Thomas G. Anderson	Commissioner	1990 to date

APPENDIX E

MINOR REPORT ON PRIORITY OF BUILDERS LIENS UNDER BILL 52 (LRC 114)

October 23, 1990

Dear Mr. Attorney:

Re: Priority of Builders Liens under Bill 52
Minor Report (LRC 114)

Late in the most recent session of the Provincial Legislature you introduced Bill 52, the *Builders Lien Act*, for exposure purposes. Reform of the Province's builders lien legislation is a topic which has a long history with the Law Reform Commission, and its members are pleased to see the extent to which the Commission's past work is reflected in the Bill. While the most immediate stimulus for the Bill was the Report of the Select Standing Committee on Labour, Justice and Intergovernmental Relations, the Committee, in turn, drew on a Report submitted by the Commission over 18 years ago recommending major conceptual and structural changes to the Act along the lines set out in the Bill.

One aspect of the *Builders Lien Act* was also the subject of a much more recent Law Reform Commission Report. In 1986 the Commission submitted its *Report on Mortgages of Land: The Priority of Further Advances*. A copy of that Report is enclosed for convenient reference. The Report examines the priority which a mortgage lender has with respect to advances of money which are made after an intervening interest in the mortgaged property has arisen. The intervening interest may be a judgment, a builders lien, or another mortgage. The rules which govern priority competitions between these interests and the mortgage lender are to be found in section 24 of the *Property Law Act* and section 6 of the current *Builders Lien Act*. The general policy of the law, as reflected in those provisions, is to give the intervening interest priority over the mortgage.

The Law Reform Commission's research identified two areas in which the application of this policy was unsatisfactory. With respect to those areas it was recommended that a mortgage lender should have priority for all advances, whenever made, over intervening interests. One of the areas identified by the Commission was where advances are made *bona fide* by the lender under a "construction mortgage" for the purposes of completing an improvement on land. The justification for this recommendation arises out of the unique character of construction financing and is described in Chapter IV of the Commission's 1986 Report.

In Bill 52, the priority of the secured lender is dealt with in section 31. Subsections (1) and (2) carry forward the policy of the current Act which subordinates the interest of the construction lender with respect to advances made after a lien has been filed. An important exception, however, is created by subsection 31(4). It provides:

> **31.** (4) Where one or more liens have been filed in relation to an improvement, a mortgagee may apply to the court for an order that, notwithstanding subsection (2), a further advance under the mortgage have priority over the liens, and if the court is satisfied that
>
> (a) the advance is intended for the bona fide purpose of completing the improvement, and
>
> (b) the advance will result in an increased value of the land and the improvement at least equal to the amount of the proposed advance,
>
> the court shall make the order.

This subsection is based directly on a recommendation made by the Select Standing Committee.

Section 31(4) reflects essentially the same concerns which moved the Law Reform Commission to make its recommendation respecting the priority of construction mortgages and, I believe, there is little or no difference between the Commission and the Committee as to the basic principle involved. Where the recommendations of the two bodies diverge is on the way in which the goal is to be realized. The Commission acknowledges that implementing the recommendation of the Select Standing Committee would represent a significant step forward in achieving what we believe to be the correct policy. Nonetheless, it is our view that the recommendations made in our 1986 Report should be recon-

sidered for implementation before a new *Builders Lien Act* is finalized.

A principal way in which the approach of the Law Reform Commission differs from that of the Select Standing Committee is that the recommendations of the Committee are confined to priority competitions between construction lenders and builders lien claimants. The Commission's recommendations are wider in scope. If the priority position of the construction lender is to be rationalized, the position of future advances vis à vis builders liens should not be dealt with in isolation from other interests. Unless broader changes are made, the kind of relief contemplated by section 31(4) of Bill 52 may prove fruitless.

For example, one or more judgments may be registered against the property at about the same time as builders liens are. Those judgments would also have priority over the interest of the construction lender with respect to any further advances. While section 31(4) might allow the construction lender to assert priority over the liens with respect to further advances, he is unlikely to make those advances unless he also has priority over the judgment. The difficulty is that the priority of the judgment flows from section 24 of the *Property Law Act* and the court has no jurisdiction to alter that priority. This would not occur under the Law Reform Commission recommendations.

The interaction between the priority rules of Bill 52 and section 24 of the *Property Law Act* can also give rise to situations of "circular priority." A description of the circumstances in which this might arise is set out in an annex to this letter.

The other significant way in which section 31(4) diverges from the Law Reform Commission recommendations is that an application to court is required and the construction lender only receives priority if the court so orders. Under the Commission's recommendations, the lender would automatically have that priority without the necessity of obtaining a court order.

The result of the subsection is to create an unnecessary application to court which will burden both the parties and the justice system. It requires that before making an order, the court be satisfied that the advance in question will result in an increased value of the land and improvement, at least equal to the value of the advance. The reality is that this condition will be satisfied in

virtually every case in which a lender will wish to make a further advance after liens have been filed. To make an advance which would not lead to increased value would be to throw good money after bad. Most construction lenders are economically rational beings who will not engage in irrational credit granting practices. The court is simply not required as a mechanism to screen advances in this way. Economic self-interest takes care of that.

A related concern is that not all judges are wholly sensitive to the realities of construction financing and may be less than sympathetic to applications by lenders which, on their face, suggest they are seeking an unjustified priority. The basis for this concern is the decision in *Yorkshire Trust* v. *Canusa Construction Ltd.* The reasons for judgment in the case are set out as Appendix C to the Commission's 1986 Report and the approach the court took in that case is the subject of comment at pages 33 and 34. The overall tenor of the *Canusa* decision suggests a failure by the court to fully appreciate the position of construction lenders and it may well be that lenders seeking an order under section 31(4) will face judge-made hurdles never intended or contemplated by the Select Standing Committee when making their recommendation.

In conclusion, for the reasons set out above, the Law Reform Commission recommends that section 31 of Bill 52 be reconsidered and that the priority position of the construction lender be rationalized along the lines set out in the Commission's 1986 Report.

This letter is to be taken as a Minor Report (No. 114) of the Law Reform Commission. This recommendation was approved by the Commission at a meeting on October 18, 1990.

Yours sincerely,

Arthur L. Close, Q.C.,
Chairman

Enclosure

ANNEX

An Example of Circular Priority Arising under Bill 52

January 1:	Construction lender is granted a mortgage over the owner's land and the improvement. The mortgage is registered in the Land Title Office and the lender makes an advance under it (advance no. 1).
February 1:	Builders lien claimant commences work on the improvement.
March 1:	A creditor of the owner of the improvement obtains a judgment which is immediately registered at the Land Title Office. The judgment creditor gives notice to the construction lender.
April 1:	The builders lien claimant files a claim of lien in the Land Title Office.
May 1:	The construction lender applies to the court under section 31(4) for an order that a further advance have priority over the claimant's lien. The court makes the order.
June 1:	The construction lender makes the advance authorized by the order (advance no. 2).

It is clear that the construction lender has priority over all parties with respect to advance no. 1. Priority with respect to advance no. 2 is less clear. The result of the various provisions seems to be that the lender has priority over the lien claimant, the lien claimant has priority over the judgment creditor, and the judgment creditor has priority over the construction lender. This is a classic circular priority situation.

This result is arrived at through the application of the following rules and provisions:

Construction Lender has Priority over Lien Claimant

This is a result of the court order and section 31(4).

Lien Claimant has Priority over Judgment Creditor

This is a result of section 21 of Bill 52. Section 21 provides:

> **21.** A claim of lien filed pursuant to this Act takes effect from the time work commenced or when the first materials were supplied for which the lien is claimed, and it has priority over all judgments, executions, attachments and receiving orders recovered, issued or made after that date.

Judgment Creditor has Priority over Construction Lender

This priority result flows from section 24 of the *Property Law Act*.